SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 281

WAYNE N. MASON, ADMINISTRATOR OF THE ESTATE OF WILLIAM S. MASON, DECEASED,

Petitioner,

vs.

THE FEDERAL LAND BANK OF BERKELEY, A CORPORATION.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

J. D. SKEEN,
E. J. SKEEN,
Counsel for Petitioner.

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PETITION FOR WRIT OF CERTIORARI.

The petition of Wayne N. Mason, as administrator of the Estate of William S. Mason, respectfully shows to the court:

That William S. Mason died on the 26th day of September, 1937 and thereafter, upon order of the District Court of Box Elder County, Utah, Wayne N. Mason was appointed administrator of the estate of the deceased. The deceased left land located in Box Elder County, Utah, which was subject to a mortgage indebtedness to the Federal Land Bank of Berkeley. Foreclosure proceedings had been instituted and in one case the property had been sold. Before the period of redemption had expired, the

administrator applied to the District Court, in which the probate proceeding is pending, for an order authorizing him to make application to the Federal Court for relief under the provisions of Section 75 of the Bankruptcy Act. An order was made giving such authority and with a copy of the letters of administration and all papers required by General Order 50-9, the administrator filed his petition in the District Court of the United States for the District of Utah, on the 18th day of June, 1940, praying for relief under Section 75 of the Bankruptcy Act. The petition was duly approved as properly filed. Thereafter the Federal Land Bank of Berkeley filed a petition in the Probate Court for an order vacating and setting aside the order authorizing the administrator to apply to the Federal Court for relief under Section 75 of the Bankruptcy Act and on the 28th day of October, 1941, said court made an order vacating and setting aside the order theretofore made. The order was made because of the ruling of the Supreme Court of Utah in *Zion's Savings Bank and Trust Company* v. *Harris,* 99 Utah 464, 105 P. 2d 461, 312 U. S. 670, 85 L. Ed. 1112, 313 U. S. 541, 85 L. Ed. 1509. Thereafter on November 8, 1941, the District Court of the United States for the District of Utah made and entered an order dismissing the proceeding theretofore filed by the administrator. An appeal was taken to the United States Circuit Court of Appeals for the Tenth Circuit from the order of dismissal on the 6th day of December, 1941, and on the 5th day of May, 1942, the Circuit Court of Appeals made and entered an order dismissing the appeal. The order is reported in 127 F. 2d 1015, and is found on page 18 of the record. The dismissal was based on the decision in *Sterling P. Harris, Administrator,* v. *Zion's Savings Bank and Trust Company,* pending on petition for writ of certiorari in this Court.

The questions presented by this application may be briefly stated as follows:

I

Is the jurisdiction of the United States District Court to grant relief to an administrator of the estate of a deceased farmer dependent upon the statutes of the state giving a probate court power to make an order authorizing an administrator to make application for such relief?

II

Is General Order 50-9 to be construed as limiting the rights conferred by Section 75, subsections (r) and (n) of the Bankruptcy Act, or should it be construed to mean that the administrator must supply the order only if an order is made authorizing him to make such application?

III

The writ of certiorari should be granted for the following reasons:

1. The personal representative including an administrator, is given the right by the Federal Statute to seek and receive the benefits conferred by Section 75 of the Bankruptcy Act, which right by the decision of the District Court and of the Circuit Court of Appeals is taken from him, by construction of the statutes and General Order 50-9. The question presented is of general importance in administering the laws of the United States.

2. There is a division among the United States Courts in the construction of the statutes. *Hines* v. *Farkas,* C. C. A. 5th Circuit, 109 F. (2d) 289, disapproves of two district court decisions, *In re Buxton's Estate* (Illinois), 14 F. Supp. 616; *In re Reynolds,* 21 F. Supp. 369, which hold that an

administrator has no authority to file a petition for relief under Section 75 in the absence of a state statute conferring such power. *Chapman* v. *Federal Land Bank of Louisville,* 117 F. (2d) 321, holds that once the probate court gives authority to apply for relief, it cannot be withdrawn. The United States Circuit Court of Appeals for the Tenth Circuit in the case of *Harris* v. *Zions Savings Bank and Trust Company,* 127 F. (2d) 1012, and in this case holds that an administrator cannot obtain relief under Section 75 without authority of the probate court in strict compliance with General Order 50.

3. A fundamental Constitutional right is in question. The Constitution, Article I, Section 8, makes the Bankruptcy Act supreme. By the express terms of Section 75 of the Bankruptcy Act, the personal representative of a deceased farmer has the right to relief under the statute. The Supreme Court of the State of Utah, the District Court of the United States, and the Circuit Court of Appeals, by the order of dismissal, have taken that right away. The Federal Constitution and statutes should be sustained by the reversal of the judgment of the Circuit Court of Appeals.

WHEREFORE, petitioner prays a writ of certiorari issue directing that all proceedings in the Circuit Court of Appeals of the Tenth Circuit be certified and that the judgment of the Circuit Court of Appeals and of the District Court and of the United States District Court for the State of Utah be reversed, and that petitioner be granted the rights provided by the statutes.

J. D. SKEEN,
E. J. SKEEN,
Counselors for Petitioner.

SUPREME COURT OF THE UNITED STATES

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SUPPORTING BRIEF.

This Court is given authority by Section 240 of the Judicial Code, 28 U. S. C. A., Section 347, page 359 and by Section 24 A of the Bankruptcy Act, to issue the writ of certiorari in this case.

The writ should be granted because:

By Section 75 of the Bankruptcy Act, a farmer may file a petition in the United States District Court and procure the benefits of the Act and upon the filing of the petition by 75 (n) the Federal Court is invested with exclusive jurisdiction over the farmer and his property. By subsection (r) the personal representative of a deceased farmer is a farmer within the purview of the Act. There is no reservation in the statute of any character. The right is

conferred upon the personal representative of a farmer absolutely and unconditionally. He is required to produce no papers except the petition with schedules. It is elementary that a right granted by Congress may not be taken away by a state.

Kalb v. *Feuerstein,* 308 U. S. 433, 84 L. Ed. 370, in this case the court said:

> "The states cannot, in the exercise of control over local laws and practice, vest State Courts with power to violate the supreme law of the land."
>
> Hines *v.* Lowery, 305 U. S. 85, 83 Law Ed. 56.

The fact that the Federal Courts do not possess probate powers is beside the question. When the probate court, however, creates a farmer, to-wit: the personal representative of a deceased farmer, that farmer is vested in his representative capacity with all the rights given by the Federal Statute. The state may not create the entity which is instantly possessed of such federal right and at the same time take the right away.

The confusion of the law resulting from different rulings of various courts of the United States and particularly from the direct holding of the Circuit Court of Appeals of the Tenth Circuit, in this case has the effect of denying the right so given.

This situation is further complicated by the requirements of General Order 50-9, which, taken literally, would seem to impose the condition that the order of the probate court be attached in all events. Great deference is given to this General Order resulting in an interpretation which has the effect of a modifying of the statute.

As stated by the Circuit Court of Appeals of the Tenth Circuit in the *Harris* case, it is not competent for a Circuit Court of Appeals to disregard it and hence, the debtor is deprived of the clear statutory right through a combination

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state court.

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This case differs from the Federal Court at the time of the
ceeding was pending in the Fede, in this case, the administra-
death of Mrs. Harris, whereas, irst instance. Section 8 of the
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case the petitioner stands squar
Act.

ıd to do with the rights of the
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are precisely in point, to-wit: ıd Bank of Louisville, 117 F.

Chapman v. *Federal Land I*
(2d) 321;

. 5th Cir., 109 F. (2d) 289;
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In re Reynolds, 21 Fed. Supp4 Fed. Supp. 616.
In re Buxton's Estate, 14 F

t should issue.
It is submitted that the writ sh

J. D. Skeen,
E. J. Skeen,
Counsel for Petitioner.

(30)

No. 281

The Supreme Court of the United States

WAYNE N. MASON, Administrator of the Estate of William S. Mason, Deceased,
Petitioner,

vs.

THE FEDERAL LAND BANK OF BERKELEY, a Corporation.

PETITION FOR REHEARING

J. D. SKEEN,
E. J. SKEEN,
Counsel for Petitioner.

The Supreme Court of the United States

WAYNE N. MASON, Administrator of the Estate of William S. Mason, Deceased,
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vs.

THE FEDERAL LAND BANK OF BERKELEY, a Corporation.

PETITION FOR REHEARING

Comes now the above named petitioner and respectfully petitions the Court for a rehearing on the petition for writ of certiorari. This petition is based upon the following grounds, towit:

1. That the Court has erred in holding that an administrator does not represent heirs under the laws of the State of Utah, and that the laws of the State of Utah prohibit an administrator from making application to the Federal Court for relief under the Bankruptcy Act.

2. That the Court has erred in holding that the Federal Land Bank of Berkeley, a secured creditor, is prejudiced or damaged by the application of an administrator for relief under the provisions of Section 75 of the Bankruptcy Act.

3. The Court has erred in assuming that a conflict exists between the jurisdiction of the state probate court and

Federal District Court by reason of the application of the administrator for relief under Section 75 of the Bankruptcy Act.

J. D. SKEEN,
E. J. SKEEN,
Attorneys for Petitioner.

I hereby certify that the foregoing petition for rehearing is made in good faith and not in delay.

.....,

J. D. SKEEN,
Attorney for Petitioner.

BRIEF IN SUPPORT OF PETITION FOR REHEARING.

The petitioner hereby refers to and adopts the brief of the petitioner in the matter of

Sterling P. Harris, Administrator of the Estate of Anna L. Harris, Deceased, Debtor Petitioner v. Zion's Savings Bank & Trust Company, No. 268 in This Court,

in support of the foregoing petition for rehearing of said matter.

Said brief is referred to and adopted for the reason that it is thought that the petition in this proceeding has been denied because of the ruling of this Court in the case referred to, and if a petition for rehearing is granted in said case, the said petitioner wishes to protect the record in order that the same rule may apply in this proceeding.

Respectfully submitted,

J. D. SKEEN,
E. J. SKEEN,
Counsel for Petitioner.

End